Robert Shales, *Appellant.* Charles Shales, *Reſpondent.*

The Appellant's CASE.

In 1685. THE Appellant's Father, *John Shales* Eſq; agreed with *Benjamin Burbeck*, and *William Cook*, and others, for the Purchaſe of ſeveral Copy-Hold Meſſuages and Lands, in or near *Hounſlow*, in the County of *Middleſex*, held of the Mannor of *Syon*, alias *Iſleworth Syon*, for which he was to pay above 600 *l.*

Not thinking it convenient to make the Purchaſe in his own Name, the Premiſſes were Surrendred to his Eldeſt Son *John*, in Truſt for the Father and his Heirs; and the Father paid the Purchaſe-Money, and the Fees and Charges of the Surrender and Admiſſion, and was in Poſſeſſion of the ſaid Eſtate, and the Rents and Profits thereof, were from time to time, Received by, or Accounted for to him.

John Died in the Life-time of his Father, without Iſſue; and the Meſſuages and Lands in Queſtion, being Bourrough *Engliſh*, did, by the Cuſtom of the Mannor, deſcend to the Reſpondent his younger Brother of the whole Blood; who was admitted thereto, and became Seiz'd thereof, in Truſt for the Father and his Heirs, and the Father, to the time of his Death, Receiv'd the Profits thereof.

In 1693. The Father Died, and the Appellant, as his Heir by the Cuſtom of the Mannor, he being the Youngeſt Son of the laſt Wife, (in whoſe Life-time and out of whoſe Fortune the Premiſſes were Purchaſed) became Entituled to the Premiſſes, and ought to have Received the Rents and Profits thereof from the Death of his Father.

Bill in Michaelmas *Term*, 1698. The Reſpondent refuſing to permit the Appellant to have the Poſſeſſion of the Premiſſes, or to Account with him for the Rents and Profits, the Appellant, in *Michaelmas* Term, 1698, Exhibited his Bill in *Chancery* againſt the Reſpondent, to compel him to Account for the Rents and Profits from the Death of his Father, and to Surrender the Premiſſes to the Appellant and his Heirs.

The Reſpondent, by his Anſwer, Confeſſeth, that the Purchaſe was made by the Father, but yet Denieth that he or his Brother was Seis'd in Truſt for the Father.

The Hearing, 24th. October 1701. The Cauſe being at Iſſue, and Witneſſes Examined, and their Depoſitions Publiſh'd, it came on to be Heard before the Right Honourable the Lord Keeper, on *Friday* the 24*th* day of *October* laſt, who was pleaſed to Decree the Appellant's Bill to be Diſmiſſed.

Which Decree, the Appellant Conceives to be Erroneous, for theſe Reaſons;

I. The Purchaſe-Mony being the Father's, the Son in whoſe Name the Purchaſe was made, is in Equity a Truſtee for the Father and his Heirs, and that in Regard the ſaid Purchaſe was made out of the Moneys and Eſtate he Received by his laſt Wife, to whoſe Iſſue-Male the Premiſſes ought to deſcend.

II. The Father was always Reputed the Owner of the Eſtate, and generally Received the Rents and Profits, and altho' ſometimes, being in Trouble, he permitted *John* the Son to Receive the Rents; yet thoſe Rents were always Accounted for to the Father.

III. The Repairs and Fences were always made at the Charges of the Father.

IV. There is not any Conveyance or Releaſe of the Father's Right to the Sons, or either of them.

The Objections made to the Appellant's Title at the Hearing of the Cauſe, and upon which the Decree ſeems to be Grounded, were;

1 *Objection.* That *John* the Son, made a Letter of Attorney to *Robert Weſt*, and others, to Receive the Rents, and pay them to *John* the Son, which, ſay they, is an Evidence that *John* the Son had the Eſtate in his own Right.

Anſwer. To which it is Anſwer'd, That what *John* did, cannot Injure the Father, unleſs he were a Witneſs, and Privy, and Conſenting to ſuch Authority.

If the Father had been privy to ſuch Letter of Attorney, it would not have been any Evidence of the Son's Right, becauſe, as has been Obſerv'd, the Father being ſometimes in Trouble, did permit his Son *John* to Receive the Rents, and Act in the Management of the Eſtate as the Owner thereof.

Robert Weſt, to whom the Letter of Attorney was made, was Nominated by *John* the Father, but it was neceſſary the Authority for him to Receive the Rents, ſhould proceed from the Son, he having the Legal Eſtate in him; and the Rents which were Received by *Weſt*, were Accounted for to the Father.

2 *Objection.* That there are ſeveral Receipts for the Quit-Rents paid by *John* the Son.

Anſwer. This Admits of the ſame Anſwer, *(viz.)* That the Receipts of the Quit-Rents muſt mention the Money to be Received of *John* the Son, the Legal Eſtate being in him, for the Lord of the Mannor could take no Notice of any Body elſe as his Tenent.

Upon the whole Matter, 'tis humbly Hoped Your Lordſhips will be pleaſed to Reverſe the Decree of the Court of Chancery, *and Order the Reſpondent to Account for the Rents and Profits, and to Surrender the Eſtate to the Appellant.*

Con. Phipps.